

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 989 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNI. CORPN

Versus

KANTILAL N THAKKAR

Appearance:

MR MG NAGARKAR for Petitioner

MR RN SHAH for Respondent

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 25/08/2000

ORAL JUDGEMENT

#. The respondents-plaintiffs filed a suit, being Civil Suit No.1483 of 1976, in the City Civil Court at Ahmedabad for a declaration that the assessment and valuation of municipal taxes in respect of the properties

bearing Municipal Census No. 653, 654 and 655 of Asarwa Revenue Ward No.V, Ahmedabad City in respect of assessment year 1974-75 for additional taxes together to with assessment valuation of municipal taxes for the suit properties in respect of the assessment year 1975-76 are illegal and invalid and also for a permanent injunction restraining the defendant-corporation, its officers, agents and/or servants from taking any step for recovery of the taxes in respect of the suit properties. It is the contention of the plaintiffs that in the assessment year 1974-75, the defendant-corporation has not served to the plaintiffs or any one of them any special notice, as provided in Schedule Chapter-VIII, Rule-21 of the Bombay Provincial Municipal Corporation Act, 1949. It is contended that the defendant has neither served upon the plaintiff any additional municipal bills nor it has served any demand notice in respect of alleged increase in valuation of the properties stated in the plaint. In the assessment year 1974-75, the defendant corporation has not even informed the plaintiff regarding the increased in the municipal valuation for the assessment year 1974-75.

#. In the written statement, Exh.14, filed by the defendant corporation, so far as upward revision of the assessment of other properties is concerned, it is contended that the same is quite, legal and valid; that non service of the demand notice is denied. The defendant in the written statement has conceded that the properties covered in the Special Property Ward were doubtly assessed and the necessary steps were taken to cancel the duplicate assessment with the result that the valuation to the tune of Rs.8238/- for the premises to be covered in the Special Property Ward has come to be withdrawn. In view of this, it was contended that the demand made under the demand warrant is quite legal and valid and the defendant is entitled to recover the municipal tax due in respect of the suit properties for the concerned assessment year under the law.

#. On the basis of the pleading, the learned Trial Judge framed relevant issues at Exh.18 and after appreciating the oral as well as documentary evidence on record, by his judgement dated November 8, 1979 was pleased to decree the plaintiffs' suit by declaring that additional tax levied by the defendant corporation with respect of the suit properties for the assessment year 1974-75 and repeated in the assessment year 1975-76 are illegal and that the defendant has no right to recover such taxes from the plaintiff or anyone of them. The learned Trial Judge issued a permanent injunction restraining the

defendant, its officers, agents and/or servants from recovering the taxes sought to be recovered by means of the notice (last warning) at Exh.20. The defendant was further directed to pay the cost of the plaintiff in the suit and to bear its own. The said judgement is under challenge in this appeal.

#. Mr. Nagarkar, learned counsel appearing for the Corporation submitted that the Trial Court has committed an error in holding that no special notice was served upon the plaintiffs for the assessment year 1974-75 and 1975-76. In the submission of Mr. Nagarkar, the Trial Court has committed an error in appreciating the evidence produced by the defendant-corporation.

#. Mr. R.N. Shah, learned Counsel appearing for the respondent, on the other hand, supported the judgement of the trial court in toto. Kantilal Thakker, plaintiff no.1, in his evidence, Exh, 19, has clearly stated that no special notice with respect to the additional taxes for the assessment year 1974-75 and for the taxes for the assessment year 1975-76, came to be served to him though he was appointed as a receiver of the suit properties by the City Civil Court in some other proceedings. In his cross-examination, he has stated that after he was appointed as a receiver in respect of the suit properties, bills for the municipal taxes in respect thereof came to be served to him in his Chamber in the compound of the Court or at his residence, though no intimation to that effect was given by him to the municipal corporation in his letter in which, he intimated to the municipal corporation about the fact of his appointment as a receiver in respect of the suit properties. He has further stated that till the assessment year 1974-75, he had no difficulties regarding receipt and payment of municipal taxes and bills in respect of the suit properties. He has admitted that he was served with a special notice for 4 yearly revision of assessment during the year 1975-76, but he could not remember where that notice was. He further stated that before the service of the special notice during the year 1975-76, no bill in respect of the suit properties for the year 1975-76 had come to be served to him. In order to establish the service of the special notice for the purpose of increasing assessment for municipal taxation in respect of the suit properties, the defendant has examined Jayantilal Shakaralal Patel, exh.44, a Senior Clerk in the valuation Department of the Corporation, for the 4 yearly assessments which were carried out in the

year 1975-76. It is stated by this witness that in all 30 persons were appointed for the purpose of service of special notices during that period. He has admitted that he could not remember who was entrusted with the work of supervision with respect to the service of special notices in the Asarwa ward. It was further admitted by him that he did not remember as to what work he was required to do as a Senior Clerk at that time. He was shown a duplicate book showing the service of special notices to the concerned property owners sought to be produced with the list at Exh.43, but, he was not able to identify the handwriting of the person preparing that book. According to him, special notices nos.71 to 79 and 125 to 139 in the said duplicate book Exh.43/1 were signed by one and the same person in token of having served the notices which were served by means of affixture, but he was not able to identify whose handwritings they were. He has admitted in the cross examination that the endorsement regarding the service of special notice with respect to nos.71 to 75 is made by a person different from the one who has made such endorsement in special notices nos. 76 to 79 in the duplicate book at Exh.43/1. He has further admitted that he has no personal knowledge about the service of special notices nos.71 to 79 and 125 to 131. He is unable to remember the person who was entrusted with the work of service of the notices found in the duplicate book of special notices at Exh.43/1. The evidence of Jayantilal Patel, in my opinion, does not inspire confidence. He is the witness who is examined for proof of service of special notice by means of affixture with respect to the suit properties and has no personal knowledge about such service. He is unable to say who has served such notice. He is unable to even identify the handwritings of the person who prepared such notices. He is also not in a position to say who has made endorsement regarding service of such notice by affixture. Under the circumstances, it is difficult for me to hold that the special notices have, in fact, come to be served to the concerned parties or anyone of them who were managing the suit properties at the relevant time. Under the circumstances, there is no reason to accept the evidence of plaintiff no.1. In this view of the matter, I am of the opinion that neither the special notice nor the bills nor any demand notices have been served to the plaintiffs or to plaintiff no.1 who was in-charge of administration and management of the suit properties at the relevant time before claiming the amount of taxes due by means of the last warning at Exh.20. In my opinion, the learned Trial Judge was perfectly justified in decreeing the suit since I am in total agreement with the reasoning of the

learned Trial Judge, I do not see any interference is called for and there being no substance in this appeal, it is dismissed. Considering the facts of the case, there shall be no order as to costs.

(K. R. Vyas, J.)

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